HEALTH FINANCE COMMISSION

Legislative Services Agency
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MEETING MINUTES[1]

Meeting Date:	**September 20, 1999**
Meeting Time:	**10:30 A.M.**
Meeting Place:	**State House, 200 W. Washington St., Room 404**
Meeting City:	**Indianapolis, Indiana**
Meeting Number:	**2**

Members Present: **Rep. Charlie Brown; Rep. William Crawford; Rep. Susan Crosby; Rep. John Day; Rep. Craig Fry; Rep. Win Moses; Rep. Peggy Welch; Rep. Robert Behning; Rep. Timothy Brown; Rep. Mary Kay Budak; Rep. David Frizzell; Rep. Gloria Goeglein; Sen. Allie Craycraft; Sen. Kent Adams; Sen. Beverly Gard; Sen. Steve Johnson; Sen. Connie Lawson; Sen. Patricia Miller.**

Members Absent: **Rep. Brian Hasler; Rep. Vaneta Becker; Sen. Billie Breaux; Sen. Earline Rogers; Sen. Vi Simpson; Sen. Greg Server; Sen. Marvin Riegsecker.**

Sen. Patricia Miller called the second meeting of the Health Finance Commission to order at about 10:40 a.m.

Sen. Miller informed the Commission that a letter from Rep. Gloria Goeglein (Exhibit 1) describing her concerns regarding long term care were distributed in the members' packets. This letter was in response to Sen. Miller's request for suggestions as to the future direction of the Commission.

Review of State Long Term Care Programs

Bob Hornyak, Assistant Director, Aging/IN-Home Services, Family and Social Services Administration, (FSSA), provided an overview of Indiana's long term care programs, including a description of services, eligibility, funding, and quality assurance. Mr. Hornyak presented a

[1]Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of $0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is http://www.ai.org/legislative/. No fee is charged for viewing, downloading, or printing minutes from the Internet.

packet of information (Exhibit 2) that included the following documents: (1) FY98 Annual Report of Statewide IN-Home Services; (2) pamphlet on the Indiana Long Term Care Ombudsman program; (3) 1998 Statistical Report on the Indiana Adult Protective Services program; (4) a document from the U.S. Administration on Aging spotlighting Indiana's IN-Home Services program; (5) a summary of Mr. Hornyak's testimony; (6) a description of Indiana's Long Term Care Insurance Program; and (7) a copy of Form 49028: Disclosure for Housing with Services Establishments.

Mr. Hornyak discussed in his testimony: (1) Indiana's single point of entry; (2) information about the IN-Home Services program, including services, eligibility, funding sources and levels, waiting lists, and quality assurance; (3) Adult Day Care services; (4) Adult Foster Care services; (5) Assisted Living; (6) nursing home care; (7) the Long Term Care Insurance program; and (8) the Residential Care Assistance program (RBA/ARCH programs).

Mr. Hornyak added: (1) The O'Bannon Administration is committed to shifting the long term care service delivery focus to follow consumer choice; (2) Citizens in Indiana want to age with options in their home or community as long as possible; and (3) The challenge is to continue to develop innovative, cost-effective programs to facilitate the provision of services in community settings based on consumer choice.

There were several questions regarding the waiting list for the CHOICE program and the costs associated with eliminating the waiting list. Mr. Hornyak indicated that 2,400 individuals who had previously been on the CHOICE waiting list were provided services with the additional funding appropriated by the General Assembly. Mr. Hornyak also stated that the existing waiting list for the CHOICE program is an imprecise way of looking at the total need that exists for a program's services. The waiting list reflects the number of individuals who have signed up for the program, and not necessarily the number of individuals in need. The number of individuals who could meet the eligibility requirements is huge. He added that estimates for the cost of eliminating the existing waiting list, as well as estimates of the number of individuals who need services, would be provided to the Commission.

Asked about the number of individuals in comprehensive nursing facilities who should not be in a nursing home, Ms. Kathy Gifford, Assistant Secretary for the Office of Medicaid Policy and Planning (OMPP), stated that Indiana's Pre-Admission Screening (PAS) program ensures that individuals who are admitted to a nursing home meet the level-of-care requirements for a nursing home. However, she stated that there is a wide range of need and level-of-care requirements exhibited by incoming nursing home residents. Consequently, even though residents may meet the level-of-care requirements, there may be some residents who could function in the community if provided with certain services. Ms. Gifford stated additional information would be provided to the Commission regarding the status of nursing home residents with respect to level-of-care.

Responding to a question regarding a definition of assisted living and whether those establishments that claim to offer assisted living services really do so, Mr. Hornyak stated that, as a result of SEA 436 (1998), establishments that are considered "housing with services" or that claim to offer assisted living services must file a disclosure form with FSSA. The disclosure form is provided in the packet provided to Commission members. He added that there have been 197 facilities that have filed disclosure forms to date.

Asked if there is a quality assurance mechanism for assisted living facilities, Mr. Hornyak stated that if a facility is licensed, it is responsible to the State Department of Health.

Responding to a question as to what steps have been or are being taken to shift resources from institutional care to services provided in the community, Mr. Hornyak indicated that the number

of slots has been increased for all the Medicaid waivers, FSSA has been working with the Area Agencies on Aging to maximize their other funding sources, and FSSA continually works with the CHOICE Board. In addition, FSSA and the State Budget Agency have continually had discussions regarding funding. Kathy Gifford, OMPP, added that the problem is that nursing home care is an entitlement and, therefore, the state cannot just shift dollars out of that area. However, the case-mix reimbursement system does help to align Medicaid reimbursement with Indiana's goals. In addition, the General Assembly has increased CHOICE funding. Ms. Gifford also added that the PAS program is part of the state's effort to inform people about their alternatives.

Update on Nursing Facility Inspection and Regulation

Mr. Gerald Coleman, Assistant Commissioner for Health Care Regulatory Services, State Department of Health (SDH) provided a document (Exhibit 3) to the Commission. Exhibit 3 summarizes the number and type of regulated facilities, the number of SDH surveyors, and selected inspection statistics for 1997 through 1999. Mr. Coleman explained that, in large part, matters got worse from 1997 to 1998, but there has been improvement in several areas from 1998 to 1999.

Responding to a question as to what is meant by a nursing home resident being in "immediate jeopardy", SDH staff indicated that the term can mean such things as malnutrition with weight loss, bed ulcers (stages 2,3,or 4), certain residents not being monitored appropriately, resident-to-resident abuse, etc. Commission members requested additional information on the number of health deficiencies of nursing home residents by broad category.

Asked as to whether there are industry standards with respect to the number of facilities and the number of surveyors, Mr. Coleman responded that the state meets the available standards. He added that with the addition of 14 surveyors, the state is keeping up on surveys. Asked as to whether surveyors give opinions regarding medical treatments, Mr. Coleman responded that they did not because of potential liability issues.

Responding to a question as to whether the state can get the job done with respect to all surveying, Mr. Coleman stated that with: (1) Hospices -- The state recently added two surveyors which is sufficient; (2) Home Health -- There is an annual inspection requirement and SDH is sufficiently staffed (Mr. Coleman noted that the federal requirement for home health inspection is a three-year cycle for certain facilities, so there could be some consideration of changing the state requirements); (3) Assisted Living -- There is no surveying, unless the facility has a residential license. Responding to a question as to whether the State Department of Health needs any additional tools to get the job done, Mr. Coleman stated that the level of fines should be adjusted. This was considered in legislation in the previous session of the General Assembly.

Sen. Craycraft stated that, having gone through the 1980 nursing home reform, if 5% to 10% of the nursing homes are operating below standards, this implies that 90% to 95% of the facilities are performing pretty well. Consequently, the statutory and administrative changes that affect the 5% to 10% that are performing below standards, probably don't have much affect on those facilities performing well.

Long Term Care Issues

Vince McGowan, Indiana Health Care Association (IHCA), distributed a handout to the Commission (Exhibit 4). Exhibit 4 describes several trends and statistics about the elderly population, nursing facility residents, average ADL (activities of daily living) dependence of nursing facility residents by state, facility occupancy rates by state, facility turnover rates, and

other selected statistics. Mr. McGowan stated that people don't choose to go to nursing homes and that this is a very personal and emotional decision that has to be made. However, Mr. McGowan added that a lot of quality care is provided from the more than 400 nursing facilities represented by the IHCA.

Mr. McGowan stated that Indiana nursing facilities maintain an approximate 75% occupancy rate, but that there is still nursing facility development going on. Indiana currently has no certificate of need (CON) law. Mr. McGowan added that Indiana has enough facilities until the year 2010, and that 43 of the 50 states have some CON or moratorium laws. He added that the average length of stay of residents has been declining from 36 months to 30 months, and the average age of residents upon entrance has been increasing.

Mr. McGowan stated that more private funding by nursing home residents would be good. Consequently, the industry would like to see more long term care insurance purchased by individuals. Mr. McGowan added that all nursing home residents theoretically could be cared for at home. However, it would not be economically efficient when considering the cost of nursing, therapy, social, and dietary services, home modifications, and house cleaning staff, etc.

Mr. McGowan added that some of the Tobacco Settlement dollars could be spent on long term care services and the IHCA would be in favor of this.

A discussion ensued regarding employment turnover and the profitability of nursing facility development. Mr. McGowan stated that the employment market is a very competitive market and that 75%-80% of all nursing facilities are forced to use pool nursing at some point in time.

Ms. Faith Laird, IHCA, provided a handout to the Commission (Exhibit 5) comparing the fines imposed by the state in 1999, with the fines imposed in 1997 and 1998. Exhibit 5 indicated that there were $451,250 in fines collected from 80 facilities in 1999 to-date (average fine approximately $5,600). This compares to $322,500 from 64 facilities in 1998 (average fine of about $5,000) and $77,500 in 1997 from 16 facilities (average fine of about $4,844). Exhibit 5 also stated that all fines from state enforcement actions are placed in the General Fund and, thus, do nothing to improve the quality of care for nursing home residents. In addition to state fines, additional fines and civil monetary penalties have been imposed and collected under federal regulations. These dollars are placed in a special fund designated for specific patient related issues.

Ms. Laird stated that nursing facilities are subject to two survey processes from: (1) the State Department of Health and (2) through the Medicaid program. The SDH survey lasts anywhere from three to four days up to two weeks and is governed, in large part, by federal requirements. With respect to the Medicaid program, nursing home residents are placed into one of 44 categories for Medicaid reimbursement purposes. If the error rate on resident categorization is too high, then the administrative component of a facility's reimbursement is penalized.

Ms. Laird described an additional concern with the current system of inspection by the SDH that doesn't allow a survey cycle to be closed until there is a revisit. Consequently, if there is a minor violation that is not significant enough to warrant a revisit before the annual survey time, there can be a denial of payment by the Health Care Finance Administration after 90 days. This results in a loss of dollars, as well as a loss of nurse aide training. Ms. Laird stated that the state needs to get a surveyor back into the facility as soon as possible.

Ms. Laird described a problem inherent in the regulations concerning the physical restraint of residents and the conflicts between the regulations, the resident's wishes, and the welfare of the resident.

A discrepancy between the IHCA's and the SDH's accounting of the fines imposed on nursing facilities was noted by Commission members. Ms. Laird stated that these numbers would be reconciled by the next meeting.

Public Testimony

Ms. Barbara Davis-Short, Danville, IN, stated that she was a social worker and that she had a mother and brother in nursing facilities. She reported that her main concern is with the care of family members and with the adverse impact of insufficient health care staff on patient care. Lack of staffing is an overwhelming problem. She added that if a nursing home resident doesn't have a family member, that resident doesn't have representation. She added that, even though she could change to another facility, changing to another facility can also be detrimental to the patient.

Mr. Richard Adams, Avon, IN, related the circumstances of his mother and his mother-in-law, both of whom are or had been in nursing homes. He stated that many problems are due to under-staffing. In his mother-in-law's nursing home, there was one nurse and one aide for 42 patients. Mr. Adams also told of his informal study of nursing homes in Lake, Porter, Tippecanoe, Vanderburg, and Bartholomew Counties and showed to the Commission a computer printout of the inspection reports. Mr. Adams stated that he was especially bothered by fines that are assessed on nursing homes and then rescinded.

Ms. Veronica Davidson, Mooresville, IN, stated that she was a licensed practical nurse and had worked in a nursing home for four years. She related her experience in a nursing facility where they had one nurse and one nurse aide for 56 patients and how this level of staffing was insufficient for proper patient care. She stated that adequate staffing is a major problem. Responding to a question as to whether there had been a shortage in staff because the facility couldn't or wouldn't hire sufficient staff, Ms. Davidson stated that, in her opinion, the facility could have hired more staff, but chose not to.

Responding to a question, Mr. Gerald Coleman stated that there is no minimum staff/patient requirement in Indiana. Commission members requested information as to the number of other states that do have mandated staff/patient ratios.

Rep. Mary Kay Budak provided a letter (Exhibit 6) she had received from Ms. Terri Trensey, South Bend, IN, concerning her good experience with Real Services. Ms. Trensey wrote that she has three sons with Duchenne Muscular Distrophy. In her contact with Real Services, Ms. Trensey stated that she was informed that there were several programs that could help her. However, the programs tended to have long waiting lists because of a lack of funding.

Due to the length of the meeting, Sen. Miller announced that those remaining individuals who were on the agenda or others who had wanted to provide testimony would be first on the agenda at the next meeting. In addition to the continuation of the discussion on long term care, Sen. Miller stated that the next meeting would consist of an update on the Children's Health Insurance Program (CHIP) by FSSA staff. There would also be a continuation of the discussion of the concept of medical necessity, as well as discussion on the performance of the Health Professions Bureau.

The next two meetings of the Commission were originally established as October 4 and October 18. However, the third meeting of the Commission was subsequently rescheduled for October 7 at 10:30 a.m. in Room 404 of the State House. The fourth meeting was later rescheduled for October 19 at 10:30 a.m. in Room 404 of the State House. (Note: Meeting times and dates are subject to change. Please check the Calendar of Interim Committee Meetings for an up-to-date listing.) The meeting was then adjourned.